

LABOUR DEPARTMENT

The 17th November, 1977

No. 17918-4Lab-77/29622.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court Rohtak, in respect of the dispute between the workman and the management of M/s Bawa Iron and Steel Works Ltd., Sonapat :—

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, LABOUR COURT,
HARYANA, ROHTAK.

Reference No. 42 of 76

Between

SHRI HARI SINGH WORKMAN AND THE MANAGEMENT OF M/S BAWA IRON
AND STEEL WORKS LIMITED, SONEPAT

AWARD

By order No. ID/RK/363-A-76/20612, dated 17th June, 1976, the Governor of Haryana referred the following dispute between the management of M/s Bawa Iron and Steel Works Ltd., Sonapat and its workman Shri Hari Singh to this Court for adjudication, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of services of Shri Hari Singh was justified and in order?
If not, to what relief he is entitled?

The parties put in their appearance in this Court in response to the usual notices of reference sent to them and filed their pleadings.

The workman alleged,—*vide* claim statement filed by him in conformity with the notice of demand served by him on the management, that the management illegally terminated his service w. e. f. 15th January, 1976, without holding any enquiry against him or serving any chargesheet on him and that he was entitled to reinstatement with continuity of service and full back wages.

The management pleaded,—*vide* written statement filed by them that the reference was bad in law for want of mention of the date of termination of services of the workman in the notice of demand. They further resisted the claim of the workman on the ground that he was not in their service since 1975 and that there was thus no relationship of employer and employee between the parties in January, 1976, when his services were alleged to have been terminated. They set up a case that the workman resigned his job in January, 1975, and remained employed elsewhere since then and that he duly arrived at a settlement with them under section 18(i) of the Industrial Disputes Act with the intervention of one Shri Shiv Singh Tondon of INTUC whereby he received Rs 168.38 in full and final settlement of all his claims.

The workman reiterated the allegations made by him in the claim statement and controverted the pleas of the management,—*vide* rejoinder filed by him with the result that the following issues were framed on pleas of the parties,—*vide* my order dated the 17th November, 1976.

- (1) Whether the workman resigned his job in January, 1975, and was no longer in service of the management thereafter and as such the reference is bad in law?
- (2) Whether the workman received Rs 168.38 in full and final settlement of all his claims from the management?
- (3) In case of non-proof of issue No. 1 and 2 whether the termination of service of Shri Hari Singh was justified and in order? If not, to what relief is he entitled?

I have heard learned authorised representatives of the parties and seen the records. I, decide the issue as under :—

Issue No. 1 and 2.—

The management concerned examined one Shri Hardayal Singh Chauhan their Director and General Manager M.W-1 and Shri Kanwal Singh appearing on their behalf as their authorised

representative M. W. 2 and brought on record the resignation Ex. M-1, the settlement Ex. M-2 and receipt Ex. M-3. This is all the evidence led by them in this case.

Shri Hardayal Singh deposed that the workman concerned Shri Hari Singh submitted resignation Ex. M. 1 bearing his thumb impression before him on 22nd January, 1975 and expressed that he wanted to resign the job and that he did not pass any orders on that date on this resignation and made an order Ex. M 1/A accepting the resignation thereupon on the next date in presence of the workman called by him. He added that he conveyed the orders Ex. M-1/A of acceptance of the resignation to the workman immediately after he made the same in his own hand writing and under his signatures, and that the parties arrived at a settlement Ex. M-2 reduced into writing and signed by them on 19th May, 1976 in presence of Shri Kanwal Singh whereby the workman concerned agreed to receive Rs. 168.38 from the management in full and final settlement of all his claims against them including that of his reinstatement. He finally gave out that the workman duly received his dues payable to him under the settlement,—*vide* receipt Ex. M-3, and that he was recorded as having resigned his job in the register of attendance of the employees w. e. f. 24th January, 1975. Shri Kanwal Singh stated that he witnessed the settlement Ex. M-2 arrived at between the workmen and the management and that Shri Hari Singh put his thumb impression at mark 'B' and Shri Hardayal Singh Chauhan signed it at mark 'A' in his presence.

The documents Ex. M-1, M-2 and M-3 all purport to bare the thumb impression of the workmen concerned. Both the witnesses examined by the management are highly interested in, as much as, Shri Hardayal Singh MW-1 is their Director and General Manager and Shri Kanwal Singh is their authorised representative defending the case in this Court on their behalf. Their evidence has thus to be carefully and closely scrutinised. The management failed to get the disputed thumb impression appearing on documents on M-1 to M-3, compared with his admitted or proved thumb impression in order to establish that the documents M-1 to M-3 actually bore his thumb impression. The evidence of Shri Hardayal Singh Chauhan and Shri Kanwal Singh being interested, the failure of the management to get the disputed thumb impression compared with the admitted or specimen thumb impression of the workman, in my opinion leads to a presumption against them, that the documents Ex. M-1 to M-3 did not bear the thumb impression of the workmen concerned.

Even assuming that the aforesaid documents bear his thumb impression, the management are under a legal duty to establish that the workman put his thumb impression on these documents with full knowledge of contents of each one of them and after fully admitting the same to be correct. Shri Hardayal Singh admittedly did not know the name of the scribe of the resignation Ex. M-1 and no such person could thus be examined by the management to prove that the resignation was actually written and scribed on the asking and at the desire of the workman concerned. No reasons could be explained as to why did Shri Hardayal Singh not make an order on the resignation Ex. M-1 on 22nd January, 1975 the date of its submission before him and why did he defer the matter of acceptance of the resignation on the next date. The presence of the workman concerned is admittedly not found recorded on 23rd January, 1975 before Shri Hardayal Singh Chauhan at the time of his making an order Ex. M-1/A and it is thus doubtful if he was actually present before him. The absence of mention of his presence in the order Ex. M-1/A on the other hand leads to an inference that he was not present before Shri Hardayal Singh on 23rd January, 1975 and the acceptance of his resignation was not conveyed to him. It is further significant to note that Shri S. K. Jairath the only person allegedly signing the resignation Ex. M-1 as a witness, was not examined by the management concerned and this circumstance further leads to an inference beyond doubt that if examined he would have deposed against them. Shri S.S. Jhandu an attending witness of the settlement Ex. M-2 was not examined and in absence of any explanation on behalf of the management for their failure to do so, further leads to a presumption that if examined he would not have supported their case. The best evidence is thus obviously found to have been withheld by the management and the interested evidence of Shri Hardayal Singh Chauhan and Shri Kanwal Singh cannot under the circumstances be relied upon particularly when the disputed thumb impression on the documents Ex. M-1 to M-3 remains uncomparated and there is no mention of the presence of the workman on the resignation Ex. M-1. The receipt Ex. M-3 is undated and there is no mention of amount actually received by the workman in this receipt. The documents Ex. M-2, M-3 are both type written and the person who actually typed the same has not even been disclosed, much less examined. In view of all the aforesaid facts and circumstance of the case I am fully convinced that the resignation Ex. M-1, the settlement Ex. M-2 and the receipt Ex. M-3 are suspicious documents and the management has failed to establish that the workman concerned thumb marked each one of them with full knowledge of its contents and after admitting it to be correct.

The workman an illiterate person emphatically denied the genuineness of the aforesaid documents,—*vide* his statement made by him as his own witness and expressly gave out that these had been fabricated by the management. It is otherwise improbable that he resigned his job of 12 years service without any valid reason and would receive only a sum of Rs. 168.38 in full satisfaction of all his claims of gratuity; earned leave wages and other benefits. The submission of the resignation Ex. M-1 on the alleged ground of ill health of the workman.

without mention of his actual ailment therein taken together with the circumstances of his being seemingly of good health when appearing as his own witness, further belies the whole story put forth by the management and lends corroboration to the pleas of the workman. I, am thus convinced that the case set up by the management is false and the documents Ex-M-1 to M-3 were fabricated by them in order to weed out the workman from service with ulterior motives of making undue gains. I thus decide both these issues against the management concerned.

Issue No. 3.

In view of my findings on issues No. 1 and 2 the termination of services of the workman by the management is obviously unjustified and he is entitled to be reinstated with continuity of service and full back wages. I, decide this issue accordingly and answer the reference while returning the award in these terms.

Dated the 4th November, 1977.

MOHAN LAL JAIN,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 2431, dated the 8th November, 1977.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

Dated the 4th November, 1977.

MOHAN LAL JAIN,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

G. V. GUPTA, Secy.